**24:05:24.01:19.  Criteria for specific learning disability.** A group of qualified professionals and the parent of the child may determine that a child has a specific learning disability if:

(1)  The child does not achieve adequately for the child's age or does not meet state-approved grade-level standards in one or more of the following areas, if provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards:

(a)  Oral expression;

(b)  Listening comprehension;

(c)  Written expression;

(d)  Basic reading skill;

(e)  Reading fluency skills;

(f)  Reading comprehension;

(g)  Mathematics calculation; and

(h)  Mathematics problem solving;

(2)(a)  The child does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in this section when using a process based on the child's response to scientific, research-based intervention; or

(b)  The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with this article; and

(3)  The group determines that its findings under this section are not primarily the result of:

(a)  A visual, hearing, or motor disability;

(b)  A cognitive disability;

(c)  Emotional disability;

(d)  Cultural factors;

(e)  Environmental or economic disadvantage; or

(f)  Limited English proficiency.

To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in this article, data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel, and data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

The school district must promptly request parental consent to evaluate the child to determine whether the child needs special education and related services, and must adhere to the timeframes described in this article unless extended by mutual written agreement of the child's parents and a group of qualified professionals. The district must request such consent if, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in this section, and whenever a child is referred for an evaluation.

**Source:** 23 SDR 31, effective September 8, 1996; 33 SDR 236, effective July 5, 2007; 49 SDR 12, effective August 14, 2022.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.